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"I Erensia, Lina'Ta', Espiritu-ta"

FILED  
DISTRICT COURT OF GUAM  
**DEC - 8 2004**  
MARY L. M. MORAN  
CLERK OF COURT

104

5 Attorneys for Petitioners

6 DISTRICT COURT OF GUAM

7 TERRITORY OF GUAM

8 JULIE BABAUTA SANTOS, et al.,

CIVIL CASE NO. 04-00006

9 Petitioners,

10 vs.

11 FELIX A. CAMACHO, etc., et al.,

12 Respondents.

13  
**DECLARATION OF MICHAEL F.  
PHILLIPS IN SUPPORT OF  
PETITIONER'S RESPONSE TO  
RESPONDENT GOVERNOR'S  
OBJECTION TO PETITIONER'S  
MOTION FOR APPROVAL OF THE  
ADMINISTRATION PLAN**

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15 I, Michael F. Phillips, declare as follows:

16 1. I am the attorney of record for the above-named Petitioner, designated by  
17 the District Court of Guam as Interim Class Counsel, and duly admitted to practice  
18 before this Court. I make this declaration of my own knowledge, and, if called as a  
19 witness, I could and would testify to the facts set forth herein;

20 2. On February 12, 2004, I filed this class action lawsuit on behalf of my  
21 client and all those similarly situated against all named Respondents. I caused to be  
22 served a copy of the applicable Summons and Petition upon each Respondent,  
23 including Governor Felix P. Camacho.

24 3. Shortly thereafter, Assistant Attorney General J. Basil O'Mallan, III  
25 contacted me and began discussions regarding the dismissal of the Attorney General of  
26 Guam as a named Respondent and the likelihood of the Office of the Attorney General  
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1 representing the Governor of Guam and all named Respondents. Attorney O'Mallan  
2 informed me the Office of the Attorney General was awaiting feedback and information  
3 from the Governor of Guam regarding the determination of whether the Office of the  
4 Attorney General of Guam would represent all Respondents. Attorney O'Mallan further  
5 explained their office did not think the Attorney General was needed as a Respondent in  
6 this case and pointed to the potential conflict in having the Attorney General himself  
7 involved in his official capacity and involved as an attorney representing the Governor  
8 and all Respondents. I agreed to dismiss the Attorney General from this case as an  
9 unnecessary party. See Dismissal, filed March 8, 2004. The Office of the Attorney  
10 General then filed the only response or opposition to our Petition three (3) days later,  
11 March 11, 2004, after informing me the Governor had agreed the Office of Attorney  
12 General should represent all Respondents in this matter;

13  
14 4. On March 23, 2004, the District Court sent a Scheduling Notice to counsel  
15 of record for Petitioner and Respondents. Assistant Attorney General O'Mallan and I  
16 began negotiations regarding the required Scheduling Order. We discussed dates and  
17 related issues over the phone on numerous occasions, and we also held a formal  
18 meeting at the Office of the Attorney General where I proposed and transmitted  
19 Petitioner's proposed Scheduling Order and Discovery Plan. Assistant Attorney  
20 General O'Mallan informed me he would consult others in the office (including the  
21 Attorney General himself) and then provide me with Respondents' position. We further  
22 negotiated minor changes and on April 28, 2004, we filed the required Scheduling Order  
23 and Discovery Plan with the District Court;

1       5. While I cannot specifically recall all who attended each court hearing or  
2 proceeding, I do know that at all times the Office of the Attorney General went on record  
3 as representing the Governor and Respondents. On at least one occasion, the  
4 Governor's legal counsel, Shannon Taitano, attended a chamber conference (most  
5 likely the Scheduling Conference on May 26, 2004) and represented to the Court that  
6 she was only attending as an observer on behalf of the Office of the Governor, and  
7 further represented that the Office of the Attorney General was representing the  
8 Governor in this matter. In fact, Ms. Taitano made it a point to ensure the record  
9 remained clear the Office of the Attorney General represented the Governor and she  
10 was simply an observer, notwithstanding her position as "legal counsel" with the Office  
11 of the Governor. Ms. Taitano also represented to Petitioner's counsel that she had  
12 done some research on the matter but was relying upon the Office of the Attorney  
13 General to represent the Governor in court.  
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16       6. As part of our discovery and trial schedule negotiations, Assistant Attorney  
17 General O'Mallan and I agreed this case was primarily a question of law and an  
18 expedited discovery and motion period would serve all parties' interests. Attorney  
19 O'Mallan represented he understood the hardship inflicted upon the working poor by not  
20 having this matter resolved as quickly as possible. I represented to Attorney O'Mallan  
21 (and to the Court) that I had prepared a motion for summary judgment and expected  
22 this case to be resolved as a matter of law. After discussions before the Court, all  
23 agreed the Petitioner would begin the work needed to move for class certification. I  
24 also discussed with Assistant Attorneys General O'Mallan and Phil Issacs my request  
25 for leave to amend Petitioner's class action petition to include years prior to 1998. I  
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1 informed the Court of my intent during the Scheduling Conference. Attorney Issacs,  
2 who represented the Office of the Attorney General during one hearing, informed me he  
3 could not make that decision and suggested I speak with Attorney O'Mallan or the  
4 attorney presently assigned to the case. Attorney O'Mallan told me he would have to  
5 think about my request and would get back to me;

7 7. On June 14, 2004, shortly after the local media revealed the Camacho  
8 administration ordered Department of Revenue and Taxation personnel to pay out at  
9 least one (1) Earned Income Tax Credit payment, and after the Camacho administration  
10 announced a policy of paying out EITC payments albeit on a "hardship" basis, the  
11 parties entered into a Settlement Agreement, subject to this Court's approval. During  
12 settlement negotiations, the parties agreed to a settlement covering income tax filers for  
13 tax years 1996 through 2003 (with the exception of 1997 which the previous  
14 administration ordered the Department of Revenue and Taxation to pay shortly before a  
15 gubernatorial election), and furthermore Respondents agreed to implement the EITC  
16 program beginning tax year 2004.

18 8. The Attorney General of Guam raised the possibility of negotiating a  
19 settlement of this case with Petitioner's counsel the same week the media ran  
20 continuing stories exposing the Governor's Office as having ordered the payment of at  
21 least one (1) EITC payment. Negotiations lasted over three (3) days, and included the  
22 Attorney General himself, the Acting Governor of Guam and his staff, and  
23 representatives of all named Respondents;

25 9. Respondent Illagan participated extensively in all negotiations and  
26 contributed significantly to the Settlement Agreement. Respondent Illagan remained in

1       telephonic contact for at least two (2) days, and participated in face to face negotiations  
2       in Petitioner's counsel's office on at least one (1) occasion. Respondent Illagan (and at  
3       least one other representative from the Department of Revenue and Taxation)  
4       participated in at least one internal briefing and also participated in the press conference  
5       arranged by the Governor's staff to announce and explain the settlement of the EITC  
6       case. During negotiations, Respondent Illagan conveyed his support for the EITC  
7       program, his desire to implement the program, and the Government's ability to fully  
8       implement the program;

10       10. Shortly after the signing of the Settlement Agreement, I was called to the  
11       Lt. Governor's Office where, along with Attorney Ricardo Bordallo from my office, we  
12       met briefly with the Attorney General, Lt. Governor of Guam (who was no longer Acting  
13       Governor), personnel from the Lt. Governor's Office, Respondent Illagan, and John  
14       Camacho of the Department of Revenue and Taxation (and possibly others). We  
15       discussed a few matters relating to the EITC settlement and after a couple minutes  
16       Attorney Bordallo and myself were excused from the meeting. It appeared at all times  
17       during and shortly after settlement negotiations that the Lt. Governor of Guam was  
18       heading the Government of Guam's effort to resolve this case. At one point the Lt.  
19       Governor informed me that one of the reasons for his extensive involvement was the  
20       fact it could be difficult for Respondent Governor to work with the Attorney General in  
21       matters such as "sit down" negotiations. Shortly before the press conference referred to  
22       above, the Acting Governor/Lt. Governor informed me and others present that the  
23       Governor was "in the loop" which explained the Governor's staff handling the press  
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1 conference. The Governor appeared on television a fews days later stating he  
2 supported the settlement  
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4 11. On a number of occasions Respondent Illagan represented the  
5 Government would be able to honor the payment schedule considered during  
6 negotiations. Respondent Illagan cooperated extensively, and in fact remained on call  
7 (and possibly at the Department of Revenue and Taxation) through the late hours of the  
8 nights the parties negotiated the Settlement Agreement. Respondent Illagan also  
9 provided Petitioner's counsel with his home phone and personal cellular phone number  
10 so that Petitioner's counsel could reach him more at any time of the day or night.  
11 Respondent Illagan and his assistant, Mr. John Camacho, briefed the Court during the  
12 settlement conference on matters such as the Government's positive ability to make the  
13 payments called for in the Settlement Agreement and the prior actions of the  
14 Department of Revenue and Taxation (including their systematic prevention of EITC  
15 filing by amending tax forms so as to prevent EITC applications). Just a day or two  
16 after Petitioner filed this action, Respondent Illagan represented to various local media  
17 that he supported the EITC program and, in fact, Respondent Governor had instructed  
18 Respondent Illagan to implement the EITC program and commence the required  
19 payments;  
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21 12. The proposed Settlement Agreement created a settlement class, known  
22 as the "EIC Class," defined to include all persons who (a) filed Guam income tax returns  
23 and (b) were and are entitled to be paid refundable earned income tax credits under the  
24 Guam Territorial Income Tax and the Earned Income Program for any or all of the  
25 following tax years: 1996, 1998, 1999, 2000, 2001, 2002 and 2003. The proposed  
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1 Settlement Agreement provided for a Settlement Amount of Sixty Million Dollars  
2 (\$60,000,000) to be made available by the Government of Guam to pay for claims made  
3 by members of the EIC Class and other fees and expenses in accordance with the  
4 Settlement Agreement.

5       13. The Government of Guam agreed to pay into an EIC Settlement Fund the  
6 amount of Three Million Dollars (\$3,000,000) by July 17, 2004, and a total of Twenty  
7 Million Dollars (\$20,000,000) by the end of June, 2005. Under the proposed  
8 agreement, the Government of Guam also agreed to pay an additional Forty Million  
9 Dollars (\$40,000,000) over eight years into the fund, and to fully implement and pay  
10 refundable earned income taxes for tax years 2004 and beyond. Counsel for Petitioner  
11 requested confirmation Respondents deposited the first installment and Respondent  
12 Perez confirmed the required payment pursuant to the terms of the Settlement  
13 Agreement;

14       14. The Plan of EIC Settlement Administration (the "Administration Plan")  
15 defines the recovery achieved for Guam taxpayers who qualify as EIC Class Members,  
16 outlines the proposed plan for calculations and payments to individuals, sets out  
17 methods used to identify EIC Class Members, and lists the duties and responsibilities of  
18 the Department of Revenue and Taxation, and counsel for the parties. All matters  
19 relating to the Administration Plan are subject to further orders as the Court may issue;

20       15. On July 16, 2004, this Court vacated the original Objection and Opt Out  
21 Date of August 9, 2004 and the November 9, 2004 hearing date on final approval of the  
22 Settlement Agreement, pending resolution of two Motions for Intervention. This Court  
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also appointed Michael F. Phillips as the interim counsel for the EIC Class. The order did not address the motion for preliminary approval of attorney fees;

16. The Office of the Attorney General, as recently as October, during a hearing before this Court, repeatedly confirmed Respondents intend to honor and are affirmatively proceeding with the Settlement Agreement. Again, the Governor failed to object or transmit any information to the Court or Interim Class Counsel of his intent to challenge the Administration Plan. Furthermore, notwithstanding the published hearing (also previously scheduled pursuant to the Scheduling Order, the Scheduling Conference at which the Governor's representative attended as an observer), the Governor failed to send anyone other than the Attorney General of Guam to represent him.

Respectfully submitted this 8<sup>th</sup> day of December, 2004.

MICHAEL F. PHILLIPS